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# Supreme Court of the United States.

No. 115.

OCTOBER TERM, 1908.

Office Supreme Court.
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JAMES H. McKEN

ARTHUR E. APPLEYARD, APPELLANT,
PETITIONER FOR WRIT OF HABEAS CORPUS,

v.

THE COMMONWEALTH OF MASSACHUSETTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

*BRIEF FOR PETITIONER, APPELLANT.*

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No. 115. October Term, 1906.

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Petitioner for Writ of Habeas Corpus,
*v.*
THE COMMONWEALTH OF MASSACHUSETTS.

## *BRIEF FOR PETITIONER, APPELLANT.*

I.

The petitioner, Arthur E. Appleyard, a resident of the state of Massachusetts, was, on April 18, 1905, arrested by Frederick A. Rhoades, a member of the district police of the Commonwealth of Massachusetts, under a warrant issued by the governor of the Commonwealth of Massachusetts upon the request of the governor of the state of New York, on the ground that the said Arthur E. Appleyard was then a fugitive from justice from the State of New York under an indictment charging him with the crime of grand larceny in the first degree, alleged to have been committed by the said Arthur E. Appleyard in Buffalo, in said state of New York, on May 18, 1904.

On April 18, 1905, the petitioner filed in the Circuit Court of the United States for the District of Massachusetts a petition for a writ of habeas corpus upon the ground that said warrant and order for arrest were issued without authority of law and contrary to the Constitution and laws of the United States and of the Commonwealth of Massachusetts, and especially contrary to Section 2, Article 4, of the Constitution of the United States, and contrary to the provisions of Section 5278 of the Revised Statutes of the United States, for the reason that the petitioner was not a fugitive from justice.

On April 20, 1905, a writ of habeas corpus was issued from said Court, and on April 22, 1905, the petitioner was brought before said Court under said writ.

On said April 22, 1905, a hearing was had before said Court upon said petition.

At said hearing there were presented to said Court the various documents set forth in the transcript of the record of the Circuit Court, being among other things the petition, the request of the governor of the state of New York to the governor of the Commonwealth of Massachusetts for the arrest and extradition of the petitioner as a fugitive from justice, the indictment against the petitioner by the Grand Jury of Erie County in the State of New York, the affidavits, on the part of the Commonwealth, of Richard Emory, Charles F. Coaney, James Holmes, Edward E. Coatsworth, Albert J. Wheeler and James T. Twitty, the report of the attorney-general for the Commonwealth of Massachusetts to the governor of the Commonwealth, and the warrant.

There were also presented, on behalf of the petitioner, various affidavits which are found in the transcript of the record.

The petitioner presented, among others, the following requests for rulings:

*First.* That on all the evidence it does not appear that Arthur E. Appleyard is a fugitive from justice within the meaning of Section 2, Article 4, of the Constitution of the United States, and of Section 5278 of the Revised Statutes of the United States, and he should therefore be discharged from custody.

*Second.* That unless it appears positively by a preponderance of the evidence that Mr. Appleyard consciously fled from justice when he left the state of New York, he should be discharged from custody.

On said April 22, 1905, the Court entered a decree refusing to give the foregoing rulings requested, ordering said petition for a writ of habeas corpus to be dismissed, and the writ of habeas corpus discharged, and on the same day the petitioner appealed to the Supreme Court of the United States from the decision so rendered, assigning, as errors, the refusal of the Court to give the two rulings above requested, said assignment of errors being set forth in said transcript of the record.

II.

Section 5278 of the Revised Statutes of the United States reads in part as follows:

"Whenever the executive authority of any state or territory demands any person as a fugitive from justice of the executive authority of any state or territory to which any such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. . . ."

Section II of the Revised Laws of the Commonwealth of Massachusetts provides as follows:

"The governor, in any case which is authorized by the Constitution and laws of the United States, may, upon demand, deliver to the executive of any other state or territory, any person charged therein with treason, felony or other crime, or may, upon application, appoint an agent to demand of the executive authority of any other state or territory any such offender fleeing from the justice of this Commonwealth. Such demand or application shall be accompanied by sworn evidence that the person charged is a fugitive from justice, and by a duly attested copy of an indictment or complaint made before a Court or magistrate authorized to receive it. Such complaint shall be accompanied by affidavits to the facts constituting the crime charged by persons who have actual knowledge thereof, and by such further evidence as the governor may require."

The question to be considered is whether under a proper construction of those statutes the petitioner was, upon the evidence presented, as a matter of law a fugitive from justice within the meaning of those statutes.

The two requests for rulings will be considered together.

If we look at the affidavits of the Commonwealth which relate to this subject matter, we find that the only evidence tending to

show that the petitioner was liable to arrest under the statute mentioned is found in the affidavits of Richard Emory and Charles F. Coaney.

In the affidavit of Richard Emory it is alleged that the petitioner, Arthur E. Appleyard, was, on May 18, 1904, the date when the alleged crime is said to have been committed by the petitioner, in the city of Buffalo, and that he has since departed therefrom; further, that the deponent is informed and believes that said Appleyard is now (February 3, 1905) in the state of Massachusetts, and that the deponent believes that he, said Appleyard, departed from New York on or about December 5, 1904.

In the affidavit of Charles F. Coaney it is alleged that the petitioner, Arthur E. Appleyard, was, on May 18, 1904, in the city of Buffalo, and has since departed therefrom, and that the deponent believes that said Appleyard is now (February 3, 1905) in the state of Massachusetts, and that he believes that said Appleyard departed from said state of New York on or about December 5, 1904.

In the affidavit of James Holmes it is alleged upon information and belief that said Appleyard was, on May 18, 1904, in the city of Buffalo, and that on this date (February 3, 1905) he is in the state of Massachusetts.

In the affidavit of Edward E. Coatsworth it is alleged on information and belief that said Arthur E. Appleyard is now (February 4, 1905) in the state of Massachusetts.

In the affidavit of James T. Twitty, given on February 3, 1905, it is alleged that said Arthur E. Appleyard, on May 18, 1904, at Buffalo, hired of the deponent a horse.

In the affidavit of the same witness given on May 16, 1905, it is stated that he has no knowledge as to whether said Appleyard was or was not in Buffalo on May 18, 1904.

The foregoing is all the evidence that the Commonwealth produces in support of the contention that the petitioner, Arthur E. Appleyard, was, at the time of the application for a warrant for his arrest and for his extradition, a fugitive from justice, and amounts to this, — that on May 18, 1904, he committed the crime alleged in Buffalo, that he departed from Buffalo on or about December 5,

1904, and that he was, on or about February 3, 1905, in the state of Massachusetts.

Assuming these allegations to be facts, and all the facts, has the Commonwealth shown that the petitioner was a fugitive from justice within the meaning of the statute?

As the request for ruling made to the justice of the Circuit Court was that upon all the evidence the petitioner was not a fugitive from justice, we may fairly take as true, and as a part of the evidence in said case, such affidavits of the petitioner as were introduced by him, and were not contradicted by or in contradiction of any of the affidavits introduced in support of the application for the warrant.

These affidavits showed that the petitioner, Arthur E. Appleyard, openly and publicly, after the date of the alleged crime, in the prosecution of his ordinary business, visited the city of Buffalo on May 20, 21, 23, 26, 27, 31, June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 20, 21, 22, 23, 24, July 5, 6, 7, 8, 10 and December 4 and 5, 1904; that he openly and publicly visited the city of New York on his business on August 16, August 17, September 12, October 7, 11, 12, 19 and 29, November 10, 17, 18, 22, 26, 27, 29 and 30, and December 4, 1904; that he openly and publicly visited on his business in the city of Albany in the state of New York on November 3, 1904; that on other dates he openly and publicly in the prosecution of his business passed through the state of New York on his way to other states; that after May 18, 1904, he was in Buffalo having business relations with the bank whose funds are alleged to have been stolen.

Said affidavits further showed that on the date of his last visit to the city of Buffalo, the petitioner did not know, and had not been informed, that he had committed any crime, and that in leaving the state of New York for his home in Massachusetts he did so in the usual course of his business, and not to flee from justice or to escape prosecution.

Unless, then, it can be laid down as a general proposition that under the statute one is a fugitive from justice whenever he is in the state in which the crime is alleged to have been committed, at the date when it is alleged to have been committed, and that he is on

the date of the application for a warrant for his arrest and extradition in the state within which his arrest is asked, regardless of all other circumstances, there is nothing in this case which would warrant the extradition, or the refusal of the Court to give the ruling asked for, that upon all the evidence the petitioner was not a fugitive from justice within the meaning of Section 5278 of the Revised Statutes of the United States.

It is conceded that there are some decisions which seem to adopt that broad construction of the statute, namely, — that of Kingsbury's case, reported in 106 Mass. 227, decided in 1870, and that of Roberts *v.* Reilly, reported in 116 U. S. 80, decided in 1885.

It was, however, decided in the case of Hyatt *v.* New York, 188 U. S. 691, a decision rendered in 1903, that where the allegations were of an indictment for a crime alleged to have been committed on a day certain within the state making the requisition, and it appeared that the person whose arrest was sought was not in the state on the date when the crime was alleged to have been committed, but was in that state on a subsequent day in the usual course of his business, and thereafter left the state, there was no such flight from justice as would warrant the arrest.

The case of Munsey *v.* Clough, 196 U. S. 364, in referring to the last case, speaks of it as a case where there is a constructive presence in the state at the time of the alleged crime, though not an actual presence.

As there was an actual indictment in the case of Hyatt *v.* New York, above cited, and as it was not the provision of the Court in the habeas corpus proceeding to determine whether a crime had or had not been committed before the petitioner for habeas corpus left the state, but to determine whether the petitioner was a fugitive from justice, it would not seem as though the mere fact of being in and leaving the state on or after the date of the alleged crime could or should be the controlling element in determining whether one is a fugitive from justice or not. A construction of the statute which says that if one is actually in the state on the date of the alleged crime, and the next day out of the state without any knowledge that he has committed any crime, he is a fugitive from justice, but that if he is not actually in the state on the date

when the crime is alleged to have been committed, though he may have been constructively in the state (there being an actual indictment), and on subsequent days goes into the state and then departs, he is not a fugitive from justice, regardless of his knowledge of whether he has or has not committed a crime, and regardless of the element of whether when he did finally leave, he left to escape prosecution, seems to be a narrow and unwarranted construction of the word " fled " in the statute.

It is perfectly apparent from the record that as a fact Arthur E. Appleyard did not flee from the state of New York, and that he was not, in fact, a fugitive from justice, if there be given to the word " flee " the ordinarily accepted and natural meaning, the only meaning ever given to it in any other connection than the one in question. He was continually in New York and Buffalo for a long time after the alleged offence, going about openly, having dealings with the very bank alleged to have been defrauded, and returning in the ordinary course of his business to Massachusetts.

The interpretation put upon the language in the case, United States *v.* O'Brien, 3 Dillon, 381, would seem to be based upon sound reasoning, namely, that a fleeing from justice means to leave one's home or residence, or one's place of abode, with intent to avoid detention or punishment for some public offence against the United States.

The various dictionaries have defined the word " flee " as meaning " to shun," " to run away from," " to attempt to escape."

We may illustrate further by quoting from the language of a certain governor as reported in 24 Am. Jur. 226, where he says:

> " Suppose a person commits an offence in this state where he continues subsequently to reside for several years, engaged in his usual avocation, the offence being a matter of public notoriety, and no one attempting to disturb him by prosecution. He then removes to the state of Georgia with his family and property, going away not clandestinely, but openly in the daytime. He continues his residence in Georgia for several years, pursuing his regular business there and demeaning himself in all respects as a good citizen. Can this man properly be considered as a fugitive from justice? "

We quote again from Penn. Law J., Vol. 6, p. 418:

"The Act of Congress contemplates the demand of a person as a 'fugitive from justice' addressed to the executive into whose jurisdiction he 'shall have fled.' A fugitive is 'one who takes shelter under another power from punishment'; to flee is 'to run from danger.' Both these expressions include a sense of danger, and a desire to escape or be screened from it. They are not satisfied by the idea of a departure from a place of temporary sojourn for one's ordinary and permanent residence.

"It may be said of many that they have returned home from New York into Pennsylvania, without inferring that they are fugitives, even though it be added that while in New York they violated some of the statutes of that state."

The word implies some conscious act on the part of the alleged fugitive, and while that is a state of mind not easily proved, the acts may conclusively negative the existence of any such intent.

In 1900 the Supreme Court of South Dakota in the case, *In Re* Tod, 12 So. Dakota, 386–395, held that the mere fact that one who is alleged to have committed a crime is, at the time when extradition is asked, not in the state in which the offence is alleged to have been committed, is not necessarily a fugitive from justice, especially if he left the state with the consent or knowledge, actual or implied, of the parties alleged to have been defrauded. In the case at bar it is apparent that the petitioner did leave the state of New York with the knowledge and implied, if not actual, assent of the party alleged to have been defrauded.

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